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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

LENA VERN DANDRIDGE, ET AL,
Respondents,

versus

JEFFERSON PARISH SCHOOL BOARD, ET AL,
Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Metairie, La. 70004

ATTORNEY FOR PETITIONERS

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971

No.

LENA VERN DANDRIDGE, ET AL,
Respondents,

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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Your petitioners, the Jefferson Parish School Board and others respectfully adopt, by reference, the entire petition of Albert B. Eason, and others, Intervenors, including both appendices. Your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 71-2542, rendered on February 11, 1972, which affirmed an earlier judgment by the District Court of the United States for the Eastern District of Louisi-

ana, New Orleans Division, in civil action number 14,801, granting Respondent further relief as originally prayed for.

SUPPLEMENTAL ARGUMENT

The primary and main issue to be considered by this Court concerns the application of the Equal Protection Clause of the Fourteenth Amendment. More particularly, the question to be answered is whether the Equal Protection Clause requires a judicially admitted unitary school system to implement the forced busing of students out of their respective school districts to other school districts merely to achieve a racial balance of the entire student body.

Petitioners, in heavy reliance on a prior judgment of the District Court, (appendix C), are firmly convinced that it has operated a unitary school system on a completely non-racial basis prior to and continuously since the rendition of a previously rendered judgment. Though there remained nineteen neighborhood schools (in a system of seventy-five) that maintained a one race or predominantly one race student body, the system was operated on a totally integrated basis. Every one of the seventy-five schools operated with integrated faculties; there was a single transportation system which transported white and black students on a non-discriminatory basis; there was a fully integrated athletic program; all other extra-curricular activities, such as bands, drama, clubs, etc., were fully non-discriminatory; and, finally, all of the seventy-five school districts were created along geographic lines without regard to the prospective racial overtones.

Plaintiffs, on May 10, 1971, moved for further relief and particularly sought to have the District Court direct petitioners to formulate a new desegregation plan which *"through racial balance* would eliminate the *racial identification* of any particular school", (emphasis added). In addition, plaintiffs sought, inter alia, a change whereby the faculty of each school would be integrated "in substantially the same ratio of white to black teachers throughout the school system".

Petitioners re-urge in argument, the memorandum it has previously submitted to United States Court of Appeals for the Fifth Circuit in support of petitioners' motion for a Suspension and Stay of Injunction, dated August 18, 1971 (Appendix C).

WHEREFORE, petitioners pray that this Honorable Court will grant a Writ of Certiorari for the purpose of evaluating and reversing the decision of the United States Court of Appeals for the Fifth Circuit, No. 71-2542, and the Judgment of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action Number 14,801, and reinstating the previously Court approved plan for a unitary system in Jefferson Parish, Louisiana.

Metairie, Jefferson Parish, Louisiana, this ____ day of June, 1972.

WALLACE C. LeBRUN
1100 North Causeway Boulevard
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ATTORNEY FOR PETITIONERS

PROOF OF SERVICE

In furtherance of the Rules I have served 2 copies of the above and foregoing Petition for Writ of Certiorari upon all parties, by pre-paid mail, addressed to their Counsel, this ____ day of June, 1972.

WALLACE C. LeBRUN

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

CIVIL ACTION
NUMBER: 71-2542

LENA VERN DANDRIDGE, et al

VS:

JEFFERSON PARISH SCHOOL BOARD, et al

MEMORANDUM IN SUPPORT OF MOTION FOR SUSPENSION AND STAY OF INJUNCTION

This matter originated with plaintiffs' complaint on July 30, 1964. It seeks a preliminary and permanent injunction enjoining defendants "from continuing their policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in the Parish and of assigning students, teachers and other school personnel to the schools operated and controlled by them on the basis of race". See paragraph II of complaint.

The complaint alleges that the schools which the black children attend are "all limited by defendants to attendance by Negro children pursuant to the policy, practice, custom and usage of defendants of operating a compulsory biracial school system and assigning school children therein and other personnel on the grounds of race".

In their said original complaint, plaintiffs prayed for eight different preliminary and permanent injunctions, all of which were based on the operation of a dual public school system which was then being operated on a racial basis.

The said matter was heard on August 10, 1964, and after hearing some evidence the Court referred the matter to a conference on a later date. The conference was held on August 24, 1964. On January 25, 1965 the Court a qua, in a written order held that "plaintiffs were entitled to a preliminary injunction as prayed for but that because of the short time remaining before the opening of the Jefferson Parish schools for the 1964-65 session and the many problems involved an order entered at that time which would require the Jefferson Parish School Board to discontinue the operation of a compulsory bi-racial school system in Jefferson Parish, Louisiana beginning with the 1964-65 term of school could not be complied with without seriously disrupting the school system to the detriment of the pupils of both races".

Further, the said order made the injunction efective with the opening of the 1965-66 school term. Defendants were enjoined from continuing to operate a compulsory bi-racial school system and were ordered to submit and file in this record, not later than March 31st, 1965, a plan which would "provide for the discontinuance of the compulsory bi-racial school system in Jefferson Parish, Louisiana".

On June 7, 1965, the District Court considering the law and the evidence ordered a plan of desegregation

to be placed in operation by August 31, 1965. The said plan called for the desegregation of certain grades in the 1965-66, 1966-67 and 1967-68 school years. It also called for implementing the "freedom of choice" concept, and set out guidelines for doing so.

A motion by plaintiffs for further relief was filed herein on June 21, 1968. A conference concerning this matter was held on July 5, 1968. On July 12, 1968 defendants were directed to submit another "plan for the assignment of all students for the 1968-69 school year upon the basis of a unitary system of non-racial geographical zones or a plan for the consolidation of grades or both . . .".

The defendants submitted a proposed plan but the Court found that it did not provide for a unitary, non-racial school system, but it did provide for further integration of the school system. The record reflects that although they submitted the plan, defendants did not recommend it, contending that the plan was neither educationally sound nor economically feasible.

On July 24, 1968, a hearing was held, at which time testimony was offered concerning the said plan. Another conference regarding this matter was held on August 20, 1968. On August 22, 1968 the Court, "after due consideration of the evidence, the argument of counsel and the law, and in light of the short period of time remaining before the scheduled opening of the 1968-69 school year" found that "it is not feasible to require the defendants to provide for a unitary, non-racial school system at this time and that to put into effect at this time the entire plan submitted by the defendants would be unduly disruptive and detrimental to the Jef-

ferson Parish School System". However, the Court did order the implementation of a portion of the proposed plan at that time. The order related to a few specifically named schools and involved a relatively few pupils. That order did not disturb the freedom of choice plan under which the system was then operating.

On February 3, 1969 the plaintiffs again filed a motion for further relief, seeking an order requiring defendants to submit a report on the progress being made in fashioning a plan which would provide for the desegregation of all schools in the Parish on a unitary non-racial basis for the 1969-70 school year and other relief concerning faculty assignments for that school year.

A hearing was set for February 19, 1969, at which time plaintiffs and defendants filed a joint motion in which it was suggested that it was agreed that the School Board would file in the record on or before February 28, 1969 a plan providing for desegregation of the Public School System of Jefferson Parish on a unitary non-racial basis of operation for the 1969-70 school year and a report on faculty assignment for that school year. The Court ordered that the School Board file the plan of desegregation and the report on the assignment of faculty on a non-racial basis contemplated by the joint motion.

In compliance with the court's order the School Board, on February 28, 1969, filed a plan for the desegregation of the school system on a unitary non-racial basis of operation for 1969-70 and a report on the proposed assignment of faculty on a non-racial basis for that school year. Maps indicating single districts were attached.

On April 18, 1969, plaintiffs filed exceptions to the desegregation plan submitted by the defendants and a hearing was had on the exceptions on May 17, 1969, at which time testimony was offered and the matter was taken under advisement. A conference regarding the matter was held by the Court on June 17, 1969.

On June 26, 1969, the Court rendered a judgment herein. I quote from that judgment:

> "Now, after due consideration of the law, the evidence and the arguments of counsel, the court finds that the plan providing for the desegregation of the Public School System of the Parish of Jefferson on a unitary non-racial basis of operation for the 1969-70 school year, submitted and filed on February 28, 1969, but not recommended by the Jefferson Parish School Board, is acceptable. The court further finds that the proposed faculty integration formula for the school year 1969-70 submitted by the School Board is also acceptable. The court further finds that the exceptions of the plaintiffs to the plan submitted are not well founded and must be overruled, accordingly.
>
> "IT IS ORDERED, ADJUDGED AND DECREED that the plaintiffs' motion for further relief be and it is hereby GRANTED.
>
> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, beginning with the 1969-70 school year, put into effect the plan providing for the desegregation of the Jefferson Parish School System on a uni-

tary, non-racial basis of operation which was submitted on February 28, 1969 by the Jefferson Parish School Board, but not recommended by it; and

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants put into effect, beginning with the 1969-70 school year, the faculty integration formula submitted by the Jefferson Parish School Board. The defendants are to report to the court when they have complied with the foregoing order.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the exceptions of the plaintiffs to the plan submitted be and they are hereby OVERRULED."

On August 29, 1969, a minor amendment to the judgment of June 26, 1969 was entered. It provided that pupils who were residing in two certain geographical zones who attended two certain schools in the 1968-69 school year be permitted to attend those same schools in the 1969-70 school year.

Defendant Jefferson Parish School Board moved for a rehearing of the Court's order of August 29, 1969, asking that the Court reconsider the freedom of choice method on the best method of operation of the Public School System in Jefferson Parish; that in the alternative, the Court issue an order permitting all students who desire to do so to attend the school which they attended during the 1968-69 school year; that, in the

second alternative, the Court issue an order requiring all students, without exception, to attend the schools in their unitary district. On September 19, 1969 the Court denied the motion of defendant.

The *Swann v. Charlotte-Mecklenburg Board of Education* case was decided by the United States Supreme Court on April 20, 1971. And on May 10, 1971 plaintiffs filed another motion for further relief asking that the defendant Jefferson Parish School Board be ordered to formulate a plan "that would provide for the desegregation of every school unit in Jefferson Parish on a proportionate basis of a 65-35 white-black ratio, so that there will be no basis for contending that one school is racially different from the others, and therefore, racially identifiable". The said motion also requested that the defendant board be ordered to assign faculty members to each school "on a basis substantially the same as the system-wide faculty racial composition, and to hire new teachers on a non-racial basis".

In plaintiffs' accompanying memorandum to its motion of May 10, 1971, they principally rely on the *Swann* case. They allege that they are entitled to facilities, as *Swann* puts it, "to prepare students to live in a pluralistic society". The plaintiffs contend that, "obviously then, whether segregation is de-jure or de-facto, the feeling of inferiority experienced by the members of the segregated race is equally vibrant and real and thus both segregations are constitutionally indecorous".

After two conferences with counsel for all parties the District Court, on July 9, 1971 ordered the Jefferson Parish School Board, in cooperative consultation with counsel for plaintiffs, formulate a desegregation plan for the public schools of Jefferson Parish. The plan was to comport with the requirements of *Swann* and was to be submitted not later than August 2, 1971, and was to be implemented in the 1971-72 school year. The order further commanded the Jefferson Parish School Board integrate the faculty of each school "so that the ratio of white to black teachers in an individual school reflects the ratio of white to black teachers in the school system as a whole".

The major controversy revolves about the issues of 1) providing a system of desegregation based on racial balance in relation to the currently existing white-black ratio of students and 2) providing forced busing of students from existing geographic zones for the sole purpose of achieving that racial balance.

On June 16, 1971, a motion for intervention was filed on behalf of Albert B. Eason and some 13,500 others who signed petitions to the Court decrying the forced busing of students from the geographic zones previously approved by the Court.

In conferences with the District Court Judge and counsel for all parties, it was pointed out that the Jefferson Parish Public School System encompasses schools on both sides of the Mississippi River and that busing of the pupils from one side to the other would be impractical. Counsel for all parties agreed that any

proposed plan that would be submitted would not provide for transporting pupils across the Mississippi River.

On August 2, 1971 the Jefferson Parish School Board, in compliance with the Court's order of July 9, 1971, submitted another desegregation plan but did not recommend its adoption. The District Court entered judgment approving the said plan on August 10, 1971.

Defendants respectfully contend that it is operating a unitary system on a non-racial basis and have been so operating since 1969 under the previously rendered Court order. The Board sincerely contends that even though there are several schools which are either all-white, all-black or substantially so, the said schools are so only as a result of de-facto segregation. The Board shows that the segregated facilities exist solely as a result of housing patterns. Not one governmental act was alleged or proved to show the existence of de-jure segregation.

Plaintiffs failed to produce a single witness to prove a single case of de-jure segregation. Counsel contended that the very existence of one-race schools was unconstitutional, completely by-passing the question of whether the segregation was de-jure or de-facto in nature.

Of course, without exception, all of the cases thus far decided by the United States Supreme Court that relate to public school desegregation are concerned only with de-jure segregation. Swann specifically re-

fers to de-jure segregation as violative of plaintiffs' constitutional rights.

Defendants strongly urge that the order of the District Court is erroneous. The defendants have been operating within all constitutional requirements and mandates. The August 10, 1971 order of the District Court amounts to an unwarranted and illegal interference with the operation of the Jefferson Parish Public School system and it provides alleged remedies relating to de-facto segregation only.

The only evidence adduced at the hearing on August 9, 1971 was conclusive in establishing that the boundaries for the individual school districts were created on a non-racial basis. However, the Court chose to disregard that evidence and apparently concluded, on its own initiative, that the mere existence of the one-race schools is violative of plaintiffs' constitutional rights in the premises.

At the hearing, defendants produced the planning director and one of his executive assistants (his other assistant at the time was out of town and unavailable for testimony). They both testified that no one at any time advised or instructed them to make any plans on a racial basis. Nor did they, in fact, make any plans discriminating against any pupil on account of race.

At several of the pre-trial conferences, the Superintendent for the Jefferson Parish Public School System assured the Court that the staff was, in fact, administering the system on a unitary non-racial basis. There

is a single busing program that transports white and black students alike, all of the schools are single district schools, i.e., the students are assigned to the schools that are located within the geographic boundaries for their respective districts, the faculties for all schools are substantially integrated, and all curricula and extracurricula activities are operated on an integrated basis.

The School Superintendent further testified that in every situation where there is a one-race school, it is so only because of the housing patterns that exist in each such district. For example, he testified that in the area bounded by the Airline Highway, Williams Boulevard in Kenner, Lake Ponchartrain and the Jefferson Parish-New Orleans line there are presently living only five negro families. He further testified that the children of those negro families were currently assigned to the schools in the districts where they reside. The area described by the superintendent encompasses fourteen elementary schools (grades 1-5) and two middle schools (grades 6-8) that were either all-white or predominantly all-white (but with integrated facilities).

On the South side of the Airline Highway in the upper portion of the Parish there exists long standing neighborhoods which are all-black or predominantly all-black. The composition of the neighborhoods has not seriously changed in many years. Reference is specifically made to the fact that the neighborhoods are the same as they were at the time in 1969 when the District Court found, after hearing evidence, that the Jef-

ferson Parish School Board was operating on a unitary non-racial basis. In that area there are two elementary schools that were all-black (but with integrated facilities) and one middle school which is predominantly all-black.

On the West side of the Mississippi River, due to housing patterns alone, there are only two elementary schools which are all-white and three elementary schools are all-black. All of those schools, however, have integrated faculties. All middle schools on the West side of the Mississippi are substantially integrated.

Finally, the defendants show that due to the relatively small number of high schools, all are substantially integrated. In fact, the composition of the high schools is not included in the Court's latest order, nor is it at issue.

The director of transportation for the Jefferson Parish School Board was brought to testify by defendants. He stated that he had studied the proposed plan of August 2, 1971, which was submitted by defendants. Based on his study and on the figures presented to him by the School Board's planning department heads, he calculated that some 3000 students who are residing within walking distances of the schools to which they are assigned will, under the proposed plan, be forcefully bused to schools outside of the district in which they reside. He opined that at least 90 per cent of those who will be bused are black children.

Further, the transportation director testified that he calculated that some of the children who will now be bused will have to travel more than 14 miles per day (round trip) and will be in transit for approximately one hour daily (one way). The new plan will require an average busing trip of over 7 miles in comparison with the present plan, which requires an average busing of approximately 2.5 miles. The witness testified that the new plan will require 20-30 additional buses and that that number of buses is not now available, that it takes approximately six weeks to get delivery of new buses, and that the Board would have to appoint new bus drivers and those drivers would have to be trained.

The District Court, in its reasons for judgment, states that, "There is little room for doubt that much of the busing which is required in Jefferson Parish is due to the past practices of a dual system, the vestiges of which have lingered on". Defendants respectfully suggest that there is not one bit of evidence in the record to substantiate that belief.

In ordering the defendants to implement this new proposed plan of August 2, 1971, the Court has created a situation that the defendant cannot control without causing serious harm to the educational program for the Jefferson Parish Public School System for the 1971-72 school year. There is an insufficient amount of time available to accomplish the results of the Court's order.

In previous situations in 1964 and again in 1968, under comparable circumstances, the Court has delayed im-

plementation of the relevant plans until the following school year. In each of those instances the Jefferson Parish School Board complied with the Court's orders without undue interference with its educational program. It cannot do so under the order presently in effect. It is respectfully suggested that the presently existing circumstances are more serious than those which existed in 1964 and 1968. In the 1964-65 school year there was an enrollment of approximately 48,500 pupils and busing was limited to single district geographic zones; under the new plan the expected enrollment will be approximately 63,000 pupils with approximately 3000 of those being transported outside their respective districts. Finally, the Court order will encompass the spending of approximately $210,000.00 for the additional buses that will be needed during the 1971-72 school year. The Court correctly points out that the defendant Board is reimbursed by the State of Louisiana in the approximate amount of $200,000.00. However, that reimbursement is on a budgeted basis and there is serious doubt concerning the availability of funds for the additional expense.

In conclusion, defendants respectfully pray that this Honorable Court grant an immediate order suspending and staying the injunction ordered by the District Court on August 10, 1971, pending appeal herein of the several important legal questions and unresolved issues presented here.

Counsel for intervenors is currently out of town and is unable to timely comply with the Court's letter request for counsel for plaintiffs-appellees to file a

response to the motion for suspension and stay of injunction pending appeal. However, Counsel for intervenors has requested that this memorandum be adopted by him on behalf of intervenors.

Metairie, Louisiana, August 18, 1971.

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FILED
OCT 10 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1474

ALBERT B. EASON, *et al.*,

Petitioners,

—v.—

LENA VERN DANDRIDGE, *et al.*,

Respondents.

No. 71-1601

JEFFERSON PARISH SCHOOL BOARD, *et al.*,

Petitioners,

—v.—

LENA VERN DANDRIDGE, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Question Presented 2

Statement 2

Reasons Why the Writ Should Be Denied 5

Conclusion 6

Appendix 1a

Table of Authorities

Cases:

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) 4

Brown v. Board of Education, 347 U.S. 483 (1954) 2

Swann v. Charlotte-Mecklenberg Bd. of Ed., 402 U.S. 1 (1971) 2, 4, 5, 6

United States v. Montgomery County Bd. of Ed., 395 U.S. 225 (1969) 3

Statutes:

28 U.S.C. §1254(1) 2

42 U.S.C. §2000c 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1474

ALBERT B. EASON, *et al.*,

Petitioners,

—v.—

LENA VERN DANDRIDGE, *et al.*,

Respondents.

No. 71-1601

JEFFERSON PARISH SCHOOL BOARD, *et al.*,

Petitioners,

—v.—

LENA VERN DANDRIDGE, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

Opinions Below

The opinion in the United States Court of Appeals for the Fifth Circuit is reported at 456 F.2d 552 and the August 13, 1971, opinion of the District Court for the Eastern District of Louisiana is reported at 332 F.Supp. 590. Since the latter opinion is not set out in the appendix

to either of the petitions for certiorari, we have done so in an appendix to this brief.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Question Presented

Whether the decisions of the courts below requiring the implementation of school desegregation plans that would effectively dismantle a dual school system are in accord with this Court's decision in *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971).

Statement

The statements in the Petitions for Certiorari filed by the School Board and by a group of intervenors are noticeably deficient in setting out the facts of this case. Those facts are contained in the opinions of the district court and the Court of Appeals and will be only briefly summarized here.

1. The Jefferson Parish School District was segregated pursuant to the law of the State of Louisiana prior to the decision of this Court in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). No steps whatsoever were taken to dismantle the dual school system until the filing of the present action in 1964 (ten years after *Brown*.)

2. No desegregation plan in the history of this litigation has been entered voluntarily by the School Board. At every stage the district court has had to require the School

Board to submit a plan that complied with the then current standards for school desegregation plans. The most recent round of this litigation, the one involved here, resulted from the decision of this Court in the *Swann* case.

3. Prior to the present plan the School Board had been operating under essentially a "neighborhood school" plan based on geographic zones. Under that plan 19 of the 75 schools in the system, or 25%, were either all or virtually all of one race. Twenty-one percent of the pupils in the system attended these 19 schools.

4. Similarly, there were substantial imbalances in the racial makeup of faculties in the schools in the system, with many of the schools having faculties that were predominantly of one race.

5. Because the existing plan did not comply with the standards established by this Court in *Swann, United States* v. *Montgomery County Bd. of Ed.,* 395 U.S. 225 (1969), and prior decisions, the plaintiffs filed a motion for further relief requesting that the School Board be required to submit a plan that would take into account the racial makeup of the school system as a whole, that would eliminate the all-one race schools and that would result in the makeup of faculties and student bodies that were reasonably close to the system-wide ratios.

6. The district court, pursuant to the dictates of *Swann,* entered precisely such an order. It took into account racial ratios only for the purpose of assuring the end of one-race or predominantly one-race schools. No rigid racial ratio was fixed or adhered to. Thus, in elementary schools the percentage of black students would range from 10 to 38 percent. In junior highs the range would be from 13

to 40 percent. 332 F.Supp. at 591 (App. to this Brief, p. 2a).

The School Board and the intervenors appealed the order of the district court and it was affirmed by the Fifth Circuit on February 11, 1972. Prior to the affirmance by the Court of Appeals the School Board had asked that court for a stay of the implementation of the district court order. When the Court of Appeals denied the stay, application was made to Mr. Justice Marshall, acting as Circuit Justice for the Fifth Circuit. He denied the stay on August 30, 1971, 404 U.S. 1219, citing *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969), and subsequent decisions. As Mr. Justice Marshall pointed out:

> There are no unusual circumstances in this case. The schools involved have been mired in litigation for seven years. Whatever progress toward desegregation has been made apparently, and unfortunately, derives only from judicial action initiated by those persons situated as perpetual plaintiffs below. 404 U.S. at 1220.

In its February 11, 1972 decision the Court of Appeals held that the district judge in all respects had complied with the requirements of *Swann.* It pointed out that under the plan only 3,000 additional students were to be bused in contrast to the 23,000 bused in *Swann.* Moreover, the average daily round trip in the present case would be only seven miles whereas in *Swann* it would be 15 miles. Thus, under the rule of *Swann* the district court had acted fully within its discretion in fashioning an appropriate remedy to bring about a final end to a dual system of schools.

Reasons Why the Writ Should Be Denied

In essence, the petitioners in both of these cases are asking no more and no less than that this Court reconsider and overrule its unanimous holding in *Swann*. They point to no facts that distinguish the present case from *Swann*. They make the bald assertion that the 19 one-race schools which the district court required to be desegregated were the result of housing patterns over which the School Board had no control. No facts are set out to support this allegation, or to show that these schools, which have always been one race, are not vestiges of the dual system. Therefore, as the district court held, 332 F. Supp. at 594 (App. to this Brief, pp. 6a-7a), the School Board clearly did not comply with the rule of *Swann:*

> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. 402 U.S. at 26.

The School Board did not so satisfy the district court and neither of the petitioners here have presented any evidence or any argument that would show that the court's conclusion was erroneous.[1] In short, as the Court of Appeals pointed out, "the real thrust" of the argument of the

[1] As the Court of Appeals pointed out, the school board did no more than make "an allusion to housing patterns." 456 F.2d at 553 (App. to cert. petition in No. 71-1474, pp. 10a-11a).

School Board and the intervenors "is a plea for neighborhood schools." 456 F.2d at 553 (App. to Petition for Certiorari in No. 1474, p. 10a). Such a plea has already been rejected by this Court in *Swann*.

Finally, the petitioners spend some time in rearguing another question laid to rest by this Court's decision in *Swann*, viz., that 42 U.S.C. § 2000c limits the power of federal courts to require transportation in school desegregation cases brought under the Fourteenth Amendment. They present no new arguments and no substantial reasons why this Court's considered judgment on that issue in *Swann* should be abandoned.

CONCLUSION

For the foregoing reasons, the petitions for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Opinion of District Court, August 13, 1971

REASONS FOR RULING

CHRISTENBERRY, *District Judge.*

Pursuant to this court's order of July 9, 1971, the defendant, Jefferson Parish School Board, submitted a new desegregation plan on August 2, 1971, to cover the elementary and middle schools of Jefferson Parish, Louisiana, commencing with the 1971-1972 school year. It was the School Board's opinion that the plan was not educationally sound and not constitutionally required and, therefore, the Board did not recommend the plan. The court has studied the plan and has held open-court hearings on August 7 and 9, 1971, to determine whether the plan complies with constitutional requirements and whether it can feasibly be implemented.

In the school year ending in June, 1971, the School Board was operating 75 public schools in Jefferson Parish, and serving 63,000 pupils. Approximately 80 percent of these pupils are white and 20 percent are black. The evidence presented prior to the order of July 9, 1971 demonstrated that the Parish school system contained 19 one-race or virtually one-race schools, more than one-fourth of the total number of public schools in the Parish. It was further shown that approximately 13,000 pupils or 21 percent of the total, attended these one-race schools. It was this court's opinion then and it is now that the perpetuation of this degree of segregation negated the School Board's argument that it had completely abandoned its dual system of public education.

Under the new plan submitted by the School Board a creditable effort has been made to integrate all public

schools in Jefferson Parish so that no school is racially identifiable. Relying on the information made available by the School Board, the plaintiffs unqualifiedly endorsed the plan and asked that it be adopted by this court. Based on anticipated enrollments, the plan would integrate the Parish elementary schools in varying white-black ratios that range from ten percent black pupils in some schools up to 38 percent black pupils in others. The integration of middle (junior high) schools would vary from 13 percent black pupils to 40 percent black pupils. The court had directed that the School Board be guided by the racial balance principle but at the same time minimize busing and preserve geographic zoning criteria as much as possible by the use of other means of school desegregation. To this end the Board, in formulating its plan, altered boundaries for elementary and middle school attendance zones and thus limited busing to a maximum of an additional 3,000 pupils. The resulting variance in percentages is in this light understood. Racial housing patterns and natural and non-natural geographic barriers also, of course, help explain these variances. Inasmuch as the Parish serves approximately 63,000 pupils, 13,000 of which were formerly in one-race schools, a plan that integrates all previously one-race schools while requiring busing for no more than 3,000 additional pupils, less than five percent of the total, is not considered by this court to place a severe burden on the School Board.

Of these 3,000 additional children that may be subject to busing, the School Board presented evidence to the effect that 90 percent are black. While it would be impermissible for the Board, in complying with a constitutional duty, to place a heavier burden on one race by design, there was no showing of bad faith in this regard. Plaintiffs' counsel, moreover, saw no reason to object to the plan for this (or any other) reason.

Evidence was also received at the August 9th hearing concerning logistical difficulties that the Board anticipates would result from the institution of the new plan. A witness for the Board testified that from 20 to 30 additional buses would be required. It is pertinent, however, that the Parish does not buy or own any of the buses used to transport pupils to and from school. Instead, bus drivers are employed who provide their own buses and they are paid by the state approximately $7,000.00 per annum. The Parish School Board then supplements each driver's salary by $305.00 per annum, meaning that the additional cost in transportation to the Parish, if in fact 30 additional buses are needed, would be approximately $9,150.00. In addition, there was testimony to the effect that new buses are not readily available and that difficulties will be encountered in notifying parents and children of new school assignments. While the court deems this evidence relevant to the feasibility of adopting a new plan, such evidence is not of paramount consideration where constitutional rights are at stake and where the law, for a number of years, has clearly charged school boards "with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green v. County School Board, 391 U.S. 430, 437-438, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968). The fact that a temporary, albeit difficult, burden may be placed on the School Board in the initial administration of the plan or the fact that some schools may not begin the school year in a routinely smooth fashion does not justify in these circumstances the continuation of a less than unitary school system and the resulting denial of an equal educational opportunity to a certain segment of the Parish school children.

Evidence presented at the August 9th hearing also indicated that under the plan the average daily roundtrip dis-

tance for the additional pupils to be bused will be about seven miles as opposed to a previous average roundtrip distance of about two and a half miles for pupils already being transported. One witness testified that the longest roundtrip distance for any child will be 14 miles and that the time for this roundtrip would be one hour. Busing has for many years been widely used in Jefferson Parish due to the suburban and semi-rural nature of the area. It is the practice of the School Board to provide transportation for all pupils living more than a mile from school and for those living less than a mile from school if a safety factor is involved. While the court is cognizant of the complications that can arise from busing young children, the burden in this set of circumstances again does not appear excessive for either the children, their parents, or the School Board. There is little room for doubt that much of the busing which is required in Jefferson Parish is due to the past practices of a dual system, the vestiges of which have lingered on.

As the Supreme Court stated in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 31, 91 S.Ct. 1267, 1283, 28 L.Ed.2d 554 (1971), "[d]esegregation plans cannot be limited to the walk-in-school." In *Swann* the average roundtrip distance that elementary children were transported was twice that of this case. The Supreme Court gave approval to that plan and to busing as a permissible tool of school desegregation. The relevant factors to be considered for the approval of a plan that entails some busing are the time and distance of travel, the age of the pupils, the capacity of the school system to provide transportation, and the extent to which busing has previously been a characteristic of the system. Considering all of these factors, the court finds that the busing called for in the School Board's plan is reasonable and workable.

More importantly, the plan should establish a genuinely unitary school system that will be realistic and effective.

Finally, the School Board, in not recommending the plan, contends that a unitary system has existed in Jefferson Parish since 1969 and that all of the existing one-race or virtually one-race schools are the result of de facto segregation and, therefore, the school system is not susceptible to the type of relief sought by plaintiffs. For the reasons set forth below, this contention is unfounded and erroneous.

It is true that the mandate of the Fourteenth Amendment's equal educational opportunity principle to eliminate dual-system education and to establish workable and effective unitary systems is directed only to de jure segregation. Swann v. Charlotte-Mecklenburg Board of Education, *supra;* Green v. County School Board, *supra;* Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). This mandate, however, does not cease merely because school authorities in a system with a history of school segregation undertake some desegregation, but rather the duty continues until all vestiges of the de jure system are eradicated. While the point at which this occurs may not always be easily discernible, the need for further relief in the Jefferson Parish system is clear. As stated above, the segregation of 19 of the 75 Parish schools has remained intact, meaning that over one-fifth of the pupils served by the Parish remain in a segregated school environment.

Beginning with the 1965-1966 school year, by this court's order, the compulsory dual school system of Jefferson Parish was formally discontinued and a plan was implemented which embodied the freedom-of-choice concept. Because of this plan's ineffectiveness and in accordance with *Green, supra,* this court adopted another plan commencing with the 1969-1970 school year and ordered the Board to operate a unitary, non-discriminatory system. At

that time the extent of the court's remedial power in dealing with the vestiges of a dual and unconstitutional school system was undefined. In the *Swann* decision, however, the Supreme Court squarely confronted this issue and discussed the means that are within the discretionary use of a district court for the elimination of the remnants of state-imposed segregation. The fact that the School Board may have been under the impression that a unitary system was in operation in Jefferson Parish and the fact that the Board complied with the 1969 order is not grounds for a denial of further relief here. "[W]hatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed." *Green, supra*, 391 U.S. at 439, 88 S.Ct. at 1695.

The contention of the School Board that the persistence of one-race schools should be attributed to residential housing patterns and therefore should be labeled de facto segregation is to by-pass the realistic view that the former dual system has never been fully dismantled. That the court now finds that further relief must be granted is not to say that the School Board has not been operating in good faith, but rather it is based upon an evaluation of the system's operations prior to and since 1969 in juxtaposition to *Swann*.

It is the court's duty now to try to ensure that the relief rendered will fully comport with constitutional requirements and thus at last establish a unitary system. To this end the court feels that the one-race schools in the Parish can no longer be tolerated. When a school board undertakes to convert a dual system into a unitary system with the result that a substantial number of one-race schools remain, then it is presumed that the conversion has been incomplete. To rebut this presumption, it was incumbent upon the School Board officials to show that these one-race

schools are "not the result of present or past discriminatory action on their part." *Swann, supra,* 402 U.S. at 26, 91 S.Ct. at 1281.

The only evidence that the school officials mustered to refute this presumption of continued de jure segregation was an allusion to housing patterns. In view of the Parish's past history of officially sanctioned school segregation and because these schools cannot be said to have been desegregated and then resegregated by shifting population trends the court is not persuaded that this is a de facto situation. In reply to the argument that school authorities with a history of de jure segregation need only devise a colorblind assignment plan, the Supreme Court stated in *Swann, supra,* 402 U.S. at 28, 91 S.Ct. at 1282:

> " 'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral."

Applying this doctrine and remembering that "[t]he measure of any desegregation plan is its effectiveness," Davis v. Board of School Commissioners, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971), the court finds that the 1969 plan was inadequate and must be superseded by the new plan.

In accordance with *Swann,* if the implementation of this plan results in full compliance with the *Brown* decision,

then the School Board will be relieved from making further adjustments in school desegregation. 402 U.S. at 31-32, 91 S.Ct. 1267. It is hoped that this plan, coupled with the Board's good faith, will make future adjustments unnecessary by this court's order. Good faith encompasses, *inter alia*, strategically selecting the construction sites of future schools so that desegregation will be enhanced; the number of pupils to be accommodated by new schools; and by the old schools that the School Board decides to abandon. A recurring problem for a court in adopting a desegregation plan is often the foreseeability of resegregation. The Board is therefore charged with the duty of pursuing a school construction and abandonment policy which will in all respects enhance and facilitate desegregation. See *Swann, supra*, 402 U.S. at 20-21, 91 S.Ct. 1267.

The court feels constrained at this point to address briefly the doubts raised by counsel for the School Board concerning the continued quality of public education in the Parish school system. The attitude of the public has all too often reflected an unwillingness to make a short-term sacrifice in public education in order to achieve important long-range goals; namely, an equal education for persons of all races, and, correspondingly, an equal opportunity for all persons to enter the economic mainstream of American life. In this case, however, the burden to be incurred by the defendant School Board in implementing this plan is so de minimis in and of itself and compared with other school desegregation cases that the court does not agree that any decrease in the quality of education should result from this plan. In addition, the guarantee of an equal educational opportunity is in no way limited to the central city of a metropolitan community, but is equally applicable to suburban areas. In other words, suburban school boards are not immunized from the responsibilities of the Four-

teenth Amendment even though it means facing problems that have long beset the adjacent central city.

In accordance with these written reasons, plaintiffs' motion for further relief is granted and the plan submitted by the Jefferson Parish School Board on August 2, 1971, is adopted. The court entered its order to this effect on August 10, 1971.